United Brotherhood of Carpenters & Joiners of America, Local No. 1400, AFL-CIO *and* Golden State Precast, Inc. and Ironworkers Local Union 433. Case 31-CD-255

24 April 1984

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND DENNIS

The charge in this Section 10(k) proceeding was filed 12 July 1983 by the Employer, alleging that the Respondent, United Brotherhood of Carpenters and Joiners of America, Local No. 1400, AFL-CIO (the Carpenters), violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to employees represented by Ironworkers Local Union 433 (the Ironworkers). The hearing was held 14 September and 4 October 1983 before Hearing Officer Mori Rubin.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

The Company, a California corporation, is engaged in the installation of precast concrete at the Los Angeles International Airport in Los Angeles, California, where it annually purchases goods valued in excess of $50,000 directly from enterprises located outside the State of California. The parties stipulate, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that the Carpenters and the Ironworkers are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. *Background and Facts of Dispute*

Since May 1983[1] the Employer has been installing precast panels on a steel-framed terminal at the Los Angeles International Airport. The Employer assigned Ironworkers-represented employees to rig, align, and weld the precast panels.

Sometime later in May, Carpenters Business Representative George Zurow approached Michael Sawyer, the Employer's secretary-treasurer, at the jobsite and asked whether any employees represented by the Carpenters were employed on the project. Sawyer replied that the Company was employing only ironworkers. According to Sawyer, Zurow responded, "[O]h, no, you're not."

In early June[2] representatives of the Carpenters, the Employer, and the general contractor, Williams & Burroughs, met to discuss the work assignments for the project. According to Sawyer, Wayne Pierce, a general representative of the Carpenters, asserted that Carpenters-represented employees should be included in the Employer's work crew pursuant to a 1959 Memorandum of Understanding signed by the Carpenters and the Ironworkers.[3] Sawyer testified that when he replied that the Employer would continue to use ironworkers, Zurow stated:

> I'll do anything I have to do. I'll stop this job cold. No one will be working here, period. This job is going to shut down. We want carpenters here. That's it.

On 7 July members of the Carpenters picketed at the jobsite carrying signs directed against Williams & Burroughs. Commencing 11 July members of the Carpenters picketed with signs reading, "Golden State Precast Inc. UNFAIR to CARPENTERS NO AGREEMENT." The picketing continued for approximately 2-1/2 weeks.[4]

B. *Work in Dispute*

The disputed work involves the rigging, aligning, and welding of precast concrete panels on a

[1] All dates were in 1983 unless specified otherwise.

[2] The record variously indicates the date as 2 June and 6 June.

[3] The memorandum, dated 23 April 1959, states:

> At a meeting held between Vice President, Juel Drake, of the International Association of Bridge, Structual [sic] and Ornamental Iron Workers and J. W. Howard, General Representative, of the United Brotherhood of Carpenters and Joiners of America, the following understanding was reached concerning the erection of pre-stressed post-stressed and pre-cast concrete members, for the Southern California area:
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> 1. The rigging of pre-stressed, post-stressed and pre-cast concrete members into approximate position shall be the work of the Iron Workers, with a member of the United Brotherhood of Carpenters at each end to supervise and assist in placing of concrete members.
> 2. The leveling, plumbing, bracing, adjusting and securing in final position shall be the work of members of the United Brotherhood of Carpenters.
>
> This understanding shall become effective on April 23, 1959, and shall remain in full force and effect until the two respective International Unions consumate [sic] an International Agreement covering the erection of this material.
>
> In order to promote a spirit of cooperation between the two crafts, the Local Union Representatives of both organizations, as well as the job stewards, shall make every effort to carry out the intent and purposes of this understanding so that work shall be performed in a friendly and cooperative spirit at all times.

[4] On 1 July 1983 the collective-bargaining agreements between area contractors and Carpenter locals in southern California terminated, and an industrywide strike began 5 July.

steel-framed terminal at Los Angeles International Airport.

C. *Contentions of the Parties*

The Employer contends that there is reasonable cause to believe the Carpenters violated Section 8(b)(4)(D) of the Act stemming from Zurow's alleged threat to shut down the jobsite if the Employer did not hire Carpenters-represented employees, as well as from the Carpenters' picketing. The Employer also contends that it is not bound by any voluntary method of resolving the dispute. The Employer asserts that the Board should award the disputed work to Ironworkers-represented employees based on its collective-bargaining agreement with the Ironworkers, company preference and practice, area and industry practice, relative skills, and economy and efficiency of operation.

The Carpenters contends that there is no probable cause to believe that it violated Section 8(b)(4)(D) of the Act. The Carpenters denies that its representatives made unlawful threats or statements, and asserts that it picketed solely in support of the industrywide construction strike begun 5 July 1983 following the 1 July expiration of the collective-bargaining agreement between the Carpenter locals and the Southern California General Contractors. The Carpenters further contends that it has a collective-bargaining agreement with the Employer which, when read in conjunction with the Employer's agreement with the Ironworkers, provides an agreed-upon method of resolving the dispute to which all parties are bound. According to the Carpenters, these agreements require resolution of the dispute by the international unions. The Carpenters further asserts that, if the Board determines the merits of the dispute, the work should be awarded to composite crews of Carpenters-represented employees and Ironworkers-represented employees based on company and area practice and the 1959 agreement between representatives of the Carpenters and the Ironworkers internationals.

The Ironworkers asserted at the hearing that the Carpenters' picketing constitutes reasonable cause to believe it violated the Act, and that the work should be awarded to employees represented by it under its collective-bargaining agreement with the Employer.

D. *Applicability of the Statute*

As stated above, Sawyer testified that, at the June meeting to discuss project work assignments, Zurow threatened to shut down the job unless Carpenters-represented employees were included in the crew. While Zurow denied making this statement, a conflict in testimony does not prevent the Board from proceeding under Section 10(k), for the Board is not charged with finding that a violation actually occurred, but only with determining that reasonable cause exists for finding a violation.[5] Accordingly, although we do not rule on the credibility of the testimony at issue, we find that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated. In this regard, in addition to the alleged threat the Carpenters actually picketed at the jobsite against Golden State. The Carpenters contends that this picketing was unrelated to this dispute, but was in support of an industrywide strike in the area. The close proximity in time between the alleged threat and the picketing, however, reasonably could lead us to infer that an object of the picketing was to have the work in dispute awarded to composite crews including Carpenters-represented employees.

There is no support for the Carpenters' contention that there is an agreed-upon method, binding on all parties, for the voluntary resolution of this dispute. In 1978 the Employer purchased its assets from a company that was party to a 1971 prehire agreement with the Carpenters. The Employer, however, repudiated its predecessor's agreement in April 1983,[6] and therefore is not bound by it.[7] The employer itself never signed any agreement with the Carpenters.

The Employer is party to an agreement between the Iron Worker Employers, State of California and a Portion of Nevada, and the District Council of Iron Workers of the State of California and Vicinity, which provides that jurisdictional disputes will be referred to the international unions involved for determinations that are binding on the signatory employers. The Carpenters, however, is not party to this agreement and cannot benefit from its terms.[8] Thus, there is no agreement for

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[5] *Longshoremen ILA Local 333 (Rukert Terminals)*, 268 NLRB 366, 367 (1983); *Bricklayers Local 44 (Corbetta Construction)*, 253 NLRB 131, 133 (1980).

[6] By letter to the Southern California District Council of Carpenters dated 15 April 1983, the Employer's president stated:

> I was recently notified that your labor organization contends that Golden State Precast, Inc. is bound to a collective bargaining agreement with your organization.
>
> The collective bargaining agreement which was signed in June 1971 was signed on behalf of a different corporation by different owners. This company has never signed any collective bargaining agreement with your labor organization.
>
> To avoid any misunderstanding, Golden State Precast, Inc., hereby repudiates and terminates any collective bargaining agreement it may have with your labor organization effectively immediately.
>
> Golden State Precast, Inc. does not employ any persons performing carpentry work and has no plans to employ such individuals in the future.

[7] *NLRB v. Iron Workers Local 103*, 434 U.S. 335, 341 (1978).

[8] See *Iron Workers Local 361 (Concrete Casting)*, 209 NLRB 112, 115 (1974).

resolution of this dispute to which all parties are bound.

We find reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred and that there exists no agreed method for voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act. Accordingly, we find that the dispute is properly before the Board for determination.

E. *Merits of the Dispute*

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 369 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of this dispute.

1. Certification and collective-bargaining agreement

There is no evidence that either the Carpenters or the Ironworkers has been certified by the Board as the collective-bargaining representative for a unit of the Employer's employees.

As stated above, the Employer has no labor agreement with the Carpenters. The Employer's agreement with the Ironworkers provides that Ironworkers-represented employees shall perform the work of "loading, unloading, hoisting, handling, signaling, placing and erection of all prestressed, poststressed, precast materials including the securing by bolting and/or welding. . . ." This description clearly encompasses the work in dispute. Accordingly, we find that this factor favors an assignment of the disputed work to Ironworkers-represented employees.

2. Company preference and past practice

Michael Sawyer, the Employer's secretary-treasurer, testified without contradiction that on prior jobs the Employer generally assigned work similar to the work in dispute to crews consisting entirely of Ironworkers-represented employees. Although on two recent occasions the Employer used composite crews at the request of general contractors, these assignments were unusual. The Employer assigned the work in dispute to employees represented by the Ironworkers, and is satisfied by and prefers this assignment. Accordingly, we find that the factor of company preference and past practice favors an award to Ironworkers-represented employees.

3. Area and industry practice

The 1959 Memorandum of Understanding between the representatives of the Ironworkers and the Carpenters internationals provides that the work of rigging and securing precast concrete will be performed by composite crews. The Employer contends, however, that the Ironworkers have frequently ignored this agreement lately, and area employers have not relied on it. As the record does not definitively indicate whether or not employers generally award this work in accordance with the interunion agreement, we find that this factor does not favor an award to employees represented by either union.

4. Relative skills

As part of the Ironworkers' apprentice program, its members take a course in welding, and approximately half of its members are certified welders. Employees represented by the Ironworkers have performed this work on previous jobs. Employees represented by the Carpenters, however, have also performed the work in dispute as part of composite crews. Accordingly, we find that this factor does not favor an award to employees represented by either Union.

5. Economy and efficiency of operation

The Employer's field superintendent, Bob Shuff, testified that, in contrast with Carpenters-represented employees, Ironworkers-represented employees can interchangeably perform all of the work involved in the rigging and aligning processes, thus increasing the efficiency of the operation. We find, therefore, that this factor favors an award to Ironworkers-represented employees.

6. Interunion agreement

As noted above, the 1959 Memorandum of Understanding requires a composite crew for the work in dispute. Accordingly, we find that this factor favors an award to a composite crew of Ironworkers-represented employees and Carpenters-represented employees.

Conclusion

After considering all the relevant factors, we conclude that Ironworkers-represented employees are entitled to perform the work in dispute. We reach this conclusion relying on the collective-bargaining agreement between the Employer and the Ironworkers, the Company's preference and past

practice, and economy and efficiency of operation. In our view, these factors outweigh the interunion agreement, which favors awarding the disputed work to a composite crew. In making this determination, we are awarding the work to Ironworkers-represented employees, not to that Union or its members. The determination is limited to the controversy that gave rise to this proceeding.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

1. Employees of Golden State Precast, Inc., represented by Ironworkers Local Union 433, are entitled to perform the work of rigging, aligning, and welding of precast concrete panels on a steel-framed terminal at Los Angeles International Airport.

2. United Brotherhood of Carpenters & Joiners of America, Local No. 1400, AFL-CIO, is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force Golden State Precast, Inc., to assign the disputed work to employees represented by it.

3. Within 10 days from this date, United Brotherhood of Carpenters & Joiners of America, Local No. 1400, AFL-CIO, shall notify the Regional Director for Region 31 in writing whether it will refrain from forcing the Employer, by means proscribed by Section 8(b)(4)(D), to assign the disputed work in a manner inconsistent with this determination.